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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Summary record of the 4th meeting
Held at Headquarters, New York, on Tuesday, 7 June 2005, at 11 a.m.

Chairman: Mr. Hunte ..... (Saint Lucia)

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05-37505 (E)

The meeting was called to order at 11.10 a.m.

1. **The Chairman** informed the Committee that the delegation of Peru had expressed the wish to participate as an Observer during the Committee's resumed session. If he heard no objection he would take it that the Committee wished to accede to the request.

Adoption of the agenda

2. *The agenda was adopted.*

Requests for hearing

3. **The Chairman** drew attention to aides-memoires 12/05 and 13/05, which contained requests for hearing on the question of the Falkland Islands (Malvinas) and the question of New Caledonia respectively. If he heard no objection, he would take it that the Committee acceded to those requests.

4. *It was so decided.*

5. **The Chairman** drew attention to aide-memoire 11/05, which contained a number of communications containing requests for hearing on the question of Puerto Rico. If he heard no objection, he would take it that the Committee wished to accede to those requests.

6. *It was so decided.*

Question of Gibraltar (A/AC.109/2005/11)

7. **The Chairman** informed the Committee that the delegation of Spain had indicated its wish to participate in the Committee's consideration of the item. In accordance with established practice and if he heard no objection, he would take it that the Committee acceded to that request.

8. **Mr. Oyarzún** (Spain) said that Spain's claim to sovereignty over Gibraltar referred not only to the Rock of Gibraltar, which had been ceded under article 10 of the Treaty of Utrecht, but also to the Isthmus, whose occupation by the United Kingdom it had never recognized. The colonial situation in Gibraltar destroyed the unity and territorial integrity of Spain. Gibraltar must therefore be decolonized not on the basis of the principle of self-determination, but in accordance with the principle of territorial integrity.

9. Spain and the United Kingdom had been engaged, since 1984, in a negotiating process — known as the Brussels Process — in order to resolve all their differences concerning Gibraltar. In October 2004, the Ministers for Foreign Affairs of Spain and the United Kingdom had issued a joint statement in which they agreed to consider and consult further on a new forum for dialogue on Gibraltar and welcomed the establishment of a Joint Committee, comprising the Gibraltar Government and the Mancomunidad del Campo de Gibraltar, to promote the identification and implementation of mutually beneficial local cooperation projects. It was working intensely and efficiently and the joint activities organized in areas such as tourism and cooperation between ports would soon be extended to other areas.

10. In December 2004, agreement had been reached on the establishment of a new three-sided forum for dialogue on Gibraltar, separate from the Brussels Process, the modalities of which would be as follows: dialogue would be on an open agenda basis and therefore any of the participants could raise any issue relating to or affecting Gibraltar; without prejudice to their constitutional status (including the fact that Gibraltar was not a sovereign independent State), each of the three parties would have its own, separate voice and participate on the same basis; and any decisions or agreements reached within the forum would have to be agreed by all three participants. If the three parties wished to take a decision on an issue in the forum where formal agreement would properly be between the United Kingdom and Spain, the United Kingdom would not agree thereto without the consent of the Government of Gibraltar. The Forum had held its first official meeting in February 2005. Expert-level meetings had also been held on issues such as pensions for Spanish citizens who had worked in Gibraltar, telecommunications and the possible joint use of the airport, including a visit by a tripartite delegation to Geneva airport.

11. He believed that all the parties were demonstrating goodwill and hoped that the United Kingdom would also respect its obligations under United Nations resolutions by bringing the colonial situation in Gibraltar to an end.

Hearing of representatives of Non-Self-Governing Territories

12. **The Chairman** drew attention to the working paper prepared by the Secretariat (A/AC.109/2005/11), adding that he had received a communication from the

Chief Minister of Gibraltar requesting an opportunity to address the Committee on the question of Gibraltar. If he heard no objection, he would take it that the Committee wished to accede to that request in accordance with its usual procedure.

13. *It was so decided.*

14. **Mr. Caruana** (Chief Minister, Gibraltar) noted that while the Committee generously agreed, every year, to hear representatives of the Government of Gibraltar, it had not reflected any of their views in its actions. Indeed, it seemed more concerned with protecting the interests of sovereignty claimants than with assisting the colonial people of a Territory to achieve decolonization.

15. The first tool of activity identified by the Committee for its work in the Second International Decade for the Eradication of Colonialism was the development of work programmes for individual Territories in which the participation of representatives of Non-Self-Governing Territories should be ensured. However, the conclusions and recommendations of regional seminars often limited such participation to Territories in which there was no dispute over sovereignty. As for the second tool — visiting missions to a Territory — the Committee had rejected his repeated invitations over many years to visit Gibraltar, precisely because of the existence of a sovereignty dispute. The third tool available to the Committee, in the case of Gibraltar, was the ability to recommend that the Fourth Committee refer the principles applicable to decolonization to the International Court of Justice for an advisory opinion. Gibraltar had repeatedly asked that that be done but, the Special Committee had refused to take such action because of the existence of a sovereignty dispute.

16. He therefore regretted to say that, in the case of Gibraltar, the Committee's inactivity was self-imposed. At both the Saint Vincent and the Grenadines regional seminar (2005) and the Papua New Guinea regional seminar (2004), the long-stated assertion by the United Nations that in the process of decolonization, there was no alternative to the principle of self-determination had been qualified by the addition of the words "and where there are no disputes over sovereignty". It seemed that in the case of Gibraltar there could be no programme of work, no visit by the Committee, no referral to the International Court of Justice, indeed no right to self-determination at all simply because there was a dispute over sovereignty.

17. That flew in the face of the principles of international law. The International Court of Justice, had in 1971, found, in its advisory opinion on Namibia, that the subsequent development of international law in regard to Non-Self-Governing Territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them and that even if integration of territory was demanded by an interested State, it could not be had without ascertaining the freely expressed will of the people, the very sine qua non of all decolonization.

18. Given that the rights of the people of Gibraltar were being denied on the pretext of the principle set forth in the preamble to General Assembly resolution 2625 (XXV) that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country was incompatible with the purposes and principles of the Charter, he pointed out that Gibraltar had not been a part of Spain since 1704. It could not therefore be argued that territorial integrity was a relevant principle in Gibraltar's decolonization process. The only applicable principle was self-determination. Moreover, the resolution went on to clarify (under the heading the principle of equal rights and self-determination of peoples) that the principle of self-determination should not impair the territorial integrity of States possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. The aim was clearly to prevent people of part of an existing country seceding from it. Neither Spain nor its Government had represented the people or territory of Gibraltar for 300 years. The principle of territorial integrity could not be used to restore a country's territory to what it had been 300 years ago, yet, Spain was seeking to do just that, and to persuade the Committee that the people of Gibraltar must therefore be denied self-determination. Such a position was a misapplication of United Nations doctrine and the principles of international law.

19. He urged the Special Committee to deal with the question of Gibraltar as a case of decolonization by self-determination and not to disqualify itself from action by virtue of the mere existence of a sovereignty dispute. For years, he had been urging the Special Committee and the Fourth Committee to stop calling for bilateral negotiations between the colonial Power,

the United Kingdom, and the claimant, Spain. He had also repeatedly stated that Gibraltar would never agree to take part in a bilateral dialogue between the colonial Power and the sovereignty claimant, as that would intrinsically violate the political rights of the people of Gibraltar.

20. While Gibraltar would welcome dialogue with Spain, the principle of consent and the right of the people to decide their future were paramount. Dialogue must be on an open agenda basis. In that regard, there had been a significant breakthrough. On 16 December 2004, a joint press release had been issued by the British Foreign and Commonwealth Office, the Spanish Ministry of Foreign Affairs and the Government of Gibraltar, continuing the establishment of a new three-sided forum for dialogue on Gibraltar separate from the Brussels Process. In the new forum, dialogue would be on an open agenda basis; each of the three parties would have its own separate voice and would participate on the same basis. Any decision reached within the forum would have to be agreed upon by all three participants.

21. He applauded Spain's decision to facilitate the establishment of the new trilateral process of dialogue. He also welcomed Spain's declared wish to normalize its relations with Gibraltar and its people. Good progress had been made since the establishment of the new process of trilateral dialogue. Spain had removed its restrictions on cruise ships sailing between Gibraltar and Spanish ports and its ban on Gibraltar-bound civilian air flights diverting, in the event of bad weather, to nearby Spanish airports. Those were welcome first steps.

22. He welcomed the disappearance from the conclusions and recommendations of the current year's seminar of expressions of support for the bilateral process between the United Kingdom and Spain under the Brussels Process noting that that was a logical consequence of the establishment of the new process, since the two processes were incompatible and could not operate in parallel or at the same time. While Gibraltar would continue to take part in the new dialogue, it would never compromise its right to freely decide its own political future in accordance with its right to self-determination.

Hearing of petitioners

23. *At the invitation of the Chairman, Mr. Bossano (Leader of the Opposition, Gibraltar) took a place at the Committee table.*

24. **Mr. Bossano** (Leader of the Opposition, Gibraltar) said that the most recent Caribbean Regional Seminar, had shown that there was now a genuine desire to complete the unfinished business of closing the chapter on colonialism.

25. It was about time the Special Committee declared its unconditional support for Gibraltar's right to self-determination. On many occasions over the past 10 years members of the Special Committee had stated clearly that there was no alternative to self-determination. In that regard it was regrettable that the Committee had, contrary to its past practice and to established United Nations doctrine, revisited at its 2004 Regional Seminar in Papua New Guinea, a conclusion of the 2002 Fiji Regional Seminar, qualifying it by the addition of the words "in which there was no dispute over sovereignty". That amendment had found its way into the draft report for the current year's Seminar, although the issue had not been discussed. That procedure was not, as stated in recommendation number 40 of the Saint Vincent Seminar, an expression of the will of the people of the Territories. There was no consensus on that issue among members of the Committee. Indeed, he failed to see how the existence of a sovereignty dispute created an alternative to self-determination. How could anyone argue that in such cases self-determination did not apply, while at the same time maintaining that self-determination was a fundamental right? It was not up to the Special Committee to mediate territorial disputes between Member States; mediation had nothing to do with the decolonization process.

26. Gibraltar was not blind to the difficulties surrounding the Territories where such disputes existed. In Gibraltar's case, the negotiations between the United Kingdom and Spain to resolve their sovereignty dispute had last taken place three years previously. The proposed solution of shared sovereignty, had been totally rejected by Gibraltar in the 2002 referendum; that was the end of the matter, as well as the end of any further sovereignty discussions between the United Kingdom and Spain. Under the new Socialist Government, Spain had indicated a

willingness to reduce the level of hostility against Gibraltar.

27. However, Spain had been required by Article 74 of the Charter of the United Nations to conduct its relations with all Chapter XI Territories, including Gibraltar, on the basis of good neighbourliness. Spain might hope that, by acting in accordance with the Charter, it would be able, at some future date, to revive the sovereignty dispute. However, it was unacceptable to assume that, because Spain placed its sovereignty claim on hold, Gibraltar should do the same with its right to self-determination, even if it appeared to suit the administering Power. Decolonization had to proceed, irrespective of what Spain did or did not do. Gibraltar's decolonization was purely a matter for Gibraltar, the United Kingdom and the Special Committee.

28. **Ms. Ferrari** (Saint Vincent and the Grenadines) welcomed the establishment of the three-sided forum for dialogue on Gibraltar. She wondered whether, in the new climate of cooperation, the Chairman had approached or intended to approach the administering Power with regard to sending a visiting mission to Gibraltar.

29. **The Chairman** said that consideration would be given during the course of the Committee's deliberations to that matter. The purpose of the hearings was not only to sit and listen, but to determine on the basis of what the Committee heard, how to approach a particular issue. He would first discuss the matter with the Bureau and the wider Committee.

30. **Mr. Bossano** (Leader of the Opposition, Gibraltar) said that in the previous year's deliberations, the United Kingdom representative had confirmed that his Government had no objection to a visiting mission to Gibraltar. The problem seemed to lie with possible objection from Spain.

31. **Mr. Caruana** (Chief Minister, Gibraltar) said that it was his understanding that the British Government had no difficulty with a visiting mission. Spain's representative had stated that his country objected to a visiting mission, because it felt that the only purpose of such a mission could be to advance the claim of the people of Gibraltar to self-determination. The Special Committee should make its decisions on the basis of hearing from the three parties and assess for itself whether the people of Gibraltar were worthy of exercising the right to self-determination.

32. *Mr. Bossano withdrew.*

33. **Mr. Oyarzún** (Spain) explained that, in his statement the previous year, he had mentioned various reasons why Spain did not feel it appropriate to send a visiting mission to Gibraltar, including the one mentioned by the representative of Gibraltar.

34. **The Chairman** suggested that the Committee, taking into account the related developments, should continue its consideration of the question of Gibraltar, subject to any directives the General Assembly might give at its sixtieth session. He also suggested that all relevant documentation should be transmitted to the General Assembly in order to facilitate consideration of that item in the Special Political and Decolonization Committee (Fourth Committee).

35. *It was so decided.*

The meeting rose at 12.25 p.m.